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ABSTRACT

At the national level, there is ample evidence of considerable racial inequality in employment in Britain. The two main components of this inequality are discrimination and disadvantage. Under the Race Relations Act of 1976, industrial tribunals are empowered to impose penalties on those who discriminate unlawfully, but the Act does not impose an obligation on employers to actively prevent discrimination. It is in the context of preventing discrimination that an Equal Employment Opportunity Policy (EEOP) is considered necessary. Very few employers in Britain have formulated EEOPs, unlike the situation in the United States where active government intervention and harsh penalties for offenders have made EEOP a reality. In Britain, however, statutory penalties are so light that most employers can budget for the risk. Employers vary in the degree of their commitment to equal employment opportunity. The most complete strategy is pursued by the employer who has recognized that his is not a white company with a multiracial workforce, but rather a multiracial organization. Ideally, an EEOP should refer to women as well as racial minorities, and should create procedures for bringing about change within the organization, indicating the direction in which the change should occur. (RIV)

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BEYOND TOKENISM -

EQUAL EMPLOYMENT OPPORTUNITIES POLICIES

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Introduction

At the national level there is now ample evidence of considerable racial inequality in employment. There are two main components of this inequality, viz. discrimination and disadvantage. The main symptoms can be summarised as follows: the unemployment rate for coloured youths is much higher than the (already high) rate for white youths, and when unemployment increases the rate for coloured workers in general rises faster than for the working population as a whole; the occupational level of coloured workers is on average lower than that for whites; a larger proportion of coloured workers work shifts; coloured workers with academic qualifications frequently hold lower level jobs than whites with comparable qualifications; coloured workers have to make more applications before securing a job, and unskilled manual workers can face discrimination in up to 50% of job applications; and finally very few coloured workers are promoted to supervisory and managerial positions.

Under the Race Relations Act 1976, discrimination in almost all aspects of employment is unlawful. The Act empowers industrial tribunals to impose penalties on those who discriminate unlawfully, but the Act does not actually impose an obligation on employers to actively prevent discrimination. A variety of books, pamphlets and statements have in recent years encouraged employers to formulate and implement equal employment opportunity policies (EEOPs). The policies are usually regarded as a necessary means to ensure that the employer abides by the Act by not discriminating, and invariably exhort the employer to go one step further by actively creating equality of opportunity for all, regardless of race or ethnic origin. The usual argument is that it is only by actively preventing discrimination and creating equal opportunity that an effective attack on racial inequality can be mounted. It is in this context that an EEOP is considered necessary.

The aim of this Briefing Paper is three-fold:

(a) To examine the arguments for and against the formulation of an equal employment opportunity policy (EEOP):

(b) To examine the effects of differing degrees of commitment to the goal of equal opportunity in employment, and to determine what can and cannot be done within the terms of the Race Relations Act 1976:

(c) To outline a strategy for change in order to attain genuine equal opportunity.

The Briefing Paper concludes with some recommendations on the key issues.

I The Arguments For and Against EEOPs

Very few employers in Britain have formulated EEOPs. In a recent survey of 283 employers at plant level it was found that only a small minority of plants had policies to prevent discrimination in recruitment. "Fourteen claimed that they had policies of this kind, while only 8% had taken concrete steps to implement the policies, and a still smaller proportion (1%) could mention a specific instance in which action had been taken".[2] In general larger employers, and those with substantial numbers of coloured employees, were more likely to have anti-discrimination policies. Interviews at the head office of 27 of the 40 largest employers in Britain revealed a similarly bleak picture in which the majority of companies had done nothing or had not gone further than discussing the matter. Between them the Commission for Racial Equality and the Runnymede Trust maintain a register of employers who have their own EEOPs or who have signed statements or policies prepared by others. Only a very small number of employers are listed.

This clearly indicates that the need for an EEOP is not widely accepted by employers in Britain. This is in stark contrast to the USA where a recent survey of 160 organisations revealed EEO programmes were "a fact of life" for nearly all employers, involving considerable change and reorganisation of the personnel function.[3] There are of course many differences in the situation in the USA and in the UK, but the similarities are sufficient to justify a comparison. In his review of developments in equal employment opportunity in America, Tom Rees argued that the relative success of the fight against discrimination in the USA depended on several factors, viz. the sympathetic attitude of the general public; active government intervention; critical and far-reaching court decisions which were often linked to severe penalties for offenders; and general economic growth. Among the more important specific factors are the obligations on employers to keep records on ethnic origins of employees, and the strict enforcement of non-discrimination clauses in Federal Government contracts.[4]

In the USA, most employers are prepared to admit that their EEOPs were designed primarily to ensure that they complied with the anti-discrimination legislation, out of a fear of litigation and the huge penalties and settlements that can be imposed by the courts. However many employers appear to have internalised the values and the social goals which are embodied in the concept of equal employment opportunity. Others have adopted a policy of enlightened self-interest. This is seen as part of the concept of social responsibility, which can often be justified on strictly business criteria.

By this line of reasoning, the employer aims at creating a healthy economic and social environment that is vital to the very existence of any business.

In Britain the main compliance factors, which operate in the USA, are for the most part absent. The political will of central government to eradicate racial discrimination and disadvantage appears to be weak; statutory penalties under the Race Relations Act are so small that most employers could budget for the risk, and hardly notice the difference*; the CRE with its potentially powerful legal armoury has done virtually nothing in its first year; the industrial tribunals are not noted for their enlightened or sympathetic decisions on matters of racial discrimination; and the unions unanimously anti-racist at the national level are for the most part inactive at the local level. In this climate why should an employer do anything at all? Why should he eliminate discrimination? Why should he promote equality of opportunity?

Some employers will take active steps to prevent discrimination merely and solely because they make a habit of abiding by the law of the land. Apart from moral reasons, which in this area would also only influence a small number of employers, the various forms of the enlightened self-interest argument are most likely to be effective.

These are :

1. A non-discrimination stance is good for the company image. As part of a general stance of social responsibility an employer may choose to make it publicly known that it is an equal opportunity employer. This may be even more important to the public image of multi-national companies and those also trading in developing countries.

2. Compliance pays. The potential cost of not complying with the law may be more costly than complying. The disruption, and loss of time which can be caused by a formal investigation (carried out by the Commission for Racial Equality) can be considerable. A formal EEOP, even if implemented, does not protect an employer against investigation (or complaints) but it does enable the employer to answer quickly and effectively any charges that are made.

3. EEOP is good insurance. An effectively implemented EEOP could reduce the risk of industrial strife which was aggravated by racial inequality and tensions. It could prevent segregation, and inequality within the organisation.

* Some employers are even insuring themselves against the risk of paying penalties as a result of employment protection laws including, among others, the Race Relations Act. (See report in Daily Telegraph 2nd May 1978).

The avoidance of ethnic work units would improve communications within the organisation, and permit a more flexible utilization of manpower.

4. EEOP enhances purchasing power of the coloured population. There are many areas in which the coloured population forms a substantial proportion of the market for an employer's goods or services. At one extreme, raising the economic status of the coloured population increases their buying power. At the other extreme a discriminatory record could result in boycotting. A service organisation also serves the needs of the coloured population, and an EEOP would be a recognition of this fact.

5. EEOP ensures effective use of personnel . These different forms of the self-interest argument may affect employers in different ways, but in all cases the existen of racial discrimination, or the use of procedures or standards which have a discriminatory effect, may be inefficie . In other words, they are less effieient than they might be. Any bias in personnel systems which is not related tothe job, and governed by business-necessity, is wasteful of valuable resources. The cost of recruiting and training is very high. The cost per successful person trained, or recruited, is made higher by not selecting. suitable people, and accepting others who may be less suitable. There is a strong case for not discriminating in view of the substantial improvements that can be made in the operation of personnel systems, such as selection, training and promotion.[5]

There are quite a few counter-arguments against the need for an EEOP. Perhaps the most common is the claim that an employer could not have a formal EEOP because it does not have formal policies on other issues, as it is not the way it goes about its business. However, in whatever it does, some pattern or policy is implicit. It may not be necessary in all cases to have a formal policy which is clearly stated and publicly communicated. The employer could use existing methods for bringing about changes through the formal and informal channels of communication. The intention and commitment to do something about racial inequality is more important than a formal policy on paper, which is not backed by a determined resolve to change existing policies and practice.

Another argument is that an EEOP would cause aggravation and hostile reaction from white workers. This argument is weakened by the absence of hostile white reaction to the policies that have been formulated. It could of course be argued that policies have not been formulated in those organisations where hostility was a real possibility The formulation of an EEOP is not a decision that should be lightly taken at top levels, because if more than lip-service is to be paid to the concept of equality in employment, far-reaching and fundamental changes within the organisation are necessitated. This is discussed in more detail below.

One thing however is clear. It is very important to involve worker representatives, and to explain the purpose of the policy, and the changes implied by it. To date there has been no serious reaction from white workers to an EEOP. This could be because the EEOPs are not being fully implemented, or because a thorough and sensitively implemented EEOP does not meet with hostile reactions.

It is frequently claimed by some employers that they are too decentralised to make a policy work, or that branches or plants are relatively autonomous in personnel matters. It is certainly true that it is difficult to enforce Head Office policy in decentralised organisations, but this problem is no different from any other faced by the Head Office. It depends largely on the determination and resolve of the employer to make the policy work. It is for example possible to include a provision in the employment contract of all staff that they are liable to dismissal for discriminatory acts, or practices.

Alternatively, one reason for loss of, or reduction in, bonuses could be non-compliance with the Race Relations Act. This could apply to supervisory and managerial staff at all levels in the organisation.

Finally, it could be argued that the avoidance of discrimination may not actually increase the efficiency of a personnel system, (e.g. selection) because it may result in the selection of equally efficient staff, even though there is a higher proportion of ethnic minorties than hitherto. If this is the case then the employer has gained compliance with the law at no real cost, whereas if the avoidance of discrimination does result in more efficient selection then there is also a positive gain to the employer.

II How far can an employer go under the Race Relation Act 1976?

If an employer decides, for whatever reason, to formulate an EEOP, two key questions arise. How far can or should the employer go? What kinds of policy are there? These questions are interelated, and are usually dependent on an employer's degree of commitment to genuine equal opportunity. The first point of reference is the Race Relations Act 1976. Consequently, it is useful to see what it specifically proscribes and permits.

are now several practical guides to the Race Relations Act[6], but the main points ofrelevance are:

- Direct or indirect discrimination on racial grounds, is illegal in almost all aspects of employment or training.
- Segregation on racial grounds is illegal.

- Discriminatory advertisements, and pressure or instructions to discriminate are unlawful.
- Discriminatory practices (or victimless discrimination) is unlawful.
- Discrimination in favour of racial groups can only occur under specific circumstances
  Where being a member of a racial or ethnic group is a genuine occupational qualification, e.g. a Chinese waiter in a Chinese restaurant:
  Where members of a particular racial group have special needs in terms of education, training, welfare and ancillary benefits.
- An employer or other training agency, may provide training specifically for racial groups who are under-represented in a job category, as well as encouragement to undertake the training.
- Employers may encourage ethnic minority workers to apply for jobs in which they are under-represented.

  Except under the circumstances noted above, and other minor exceptions affecting specific groups, e.g. seamen and overseas workers, the Act does not permit employers to discriminate in favour of racial groups at the point of entry to employment.

In general the aim of the Act is to discourage discrimination by making it unlawful. It is important to note that the Act itself does not require employers to take active steps to prevent discrimination; it only imposes penalties on those who are found to have discriminated. There is no legal obligation to prevent discrimination. Equally the Act does not require employers to actively create genuine equality of opportunity. It is entirely up to the employer to decide whether or not to actively prevent discrimination. The only exception to this is section 71 of the Act which specifically imposes on local authorities the duty, in the execution of their various functions to eliminate unlawful discrimination and in addition to promote equality of opportunity and good race relations.

III Degrees of Commitment to Equal Opportunity in Employment

Employers vary in the degree of their commitment to actively dealing with discrimination. What they are prepared to do in terms of equal opportunity depends largely on this degree of commitment. Five successive stages can be recognised:

I. "We don't discriminate anyway". These employers often claim that racial discrimination is unacceptable, but that it is something other people do. They argue that there is no need for an EEOP because they themselves do not discriminate. The point here is that no employer can make this claim without making a thorough examination of his personnel practices and the ethnic composition of the labour force at all levels in the organisation. Direct discrimination is often covert, and sometimes practised without the knowledge of middle or senior management. In addition, the very

nature of indirect discrimination is that it occurs without the employer knowing that a particular personnel practice is having a discriminatory effect. This laissez-faire attitude contributes to the continuation of discrimination on the systematic and massive scale revealed by the studies quoted above. It may comfort the employer to know that although an industrial tribunal could order him to stop operating a practice which has an unjustifiable discriminatory effect, no penalties would be imposed for what, in effect, is unintended discrimination, unless it could also be shown that the employer intended to discriminate.

2. "We'll sign someone elses statement that we don't discriminate...and then do nothing." This strategy comes in a variety of forms. The employer might agree to add its name to the list of signatories to a statement on equal opportunity prepared by a local community relations council. In this way it can benefit from good public relations without even having to go to the trouble to formulate its own policy and define its own problem, or the solution. Alternatively, the employer might agree to the inclusion of the TUC's model clause on equal opportunity, (The TUC issued the model clause in March £975 and recommended that it be written into all relevant agreements with employers), in a collective agreement, and then satisfy itself that it has done enough. Unless the clause is enforced by the local union, it is not worth the paper it is written on. This is also true of EEO statements signed by employers who then do nothing.

The final, and perhaps the most unacceptable, form of this strategy is the totally ignored non-discrimination clause which has been included in all government contracts since £970. This clause requires the contractor to abide by the provisions of the 1968 Race Relations Act, and in effect, any later re-enactment. It appears that not one employer has been held tothe obligations of this part of the contract, presumably because contractors are not required to present evidence that they have complied. The Department of Employment has not, to date, even monitored the impact of the clause. The lip-service that is paid to equal opportunity by the non-enforcement of the clause may encourage other employers to indulge in tokenism, and to let words be a substitute for appropriate action. In view of the great success in the United States of the strictly enforeed Federal Contractor Compliance Program in bringing about greater equality in employment, the Department of Employment should be given the duty, funds and staff not only to monitor, but also to enforce, the non-discrimination clause of government contracts.

3. "We'll formulate a policy of our own, but won't try very hard to implement it". This is probably the most common type of policy by which the employer recognises that discrimination occurs in the organisation but believes that the statement of the policy not to discriminate, even if it is communicated down the line, is sufficient to

ensure that it will be complied with. This kind of policy is usually aimed at preventing discrimination of the direct variety, and does not usually involve any active measures to ensure that equal opportunity is achieved. It would almost certainly not include either the recording of employees' ethnic origins, or the provision of special training, or encouragement, for under-represented coloured workers This kind of policy gives the impression that something has been done, when in fact nothing is done which will actually eliminate discrimination, or create equality of opportunity. There is a danger, that having done this much, the employer will strike equal employment opportunity off his action list and reassure himself that all that is necessary has been done. Those whose business it is to encourage employers to eliminate discrimination should guard against falling into the "policy is enough trap". This would apply as much to cre employment officers, as to the DE Race Relations Employment Advisers, who enthusiastically encourage employers to formulate EEOPs.

4. "We'll eliminate discrimination". It may not be necessary to have a publicly stated policy for an employer to eliminate discrimination. The issue of whether or not to have a formal publicly stated policy can be decided on other grounds. The most important issue is the belief that discrimination can operate covertly, and that the only way to start the attack is to undertake a detailed and thorough self-analysis of the organisation as a whole. The analysis would yield information in two main areas, viz:

(a) The present numbers of employees, and job applicants, of different ethnic origin at all levels, and in all departments; and

(b) The discriminatory effect of all personnel policies and practices, which may or may not be justifiable on non-racial grounds.

Having analysed the barriers to equal opportunity, the employer is then in a position to formulate its plans for corrective action. It can do this on the basis of objective information from the analysis, and the availability of black workers in the labour pool. The plan should involve the allocation of responsibility for its operation to a senior manager, who is given enough time and staff to ensure its implementation. The plan, negotiated where necessary with union representatives, would involve changes in personnel practices and thestandards used in selection, training, job allocation, promotions, etc. The changes in selection and promotion criteria would ideally be the result of objective job analysis techniques which determine the skills, knowledge and attributes that are necessary to successful performance of the job. This approach has been widely used in the United States as a means of eliminating built-in biases in employment practices. It has the advantages of also increasing the overall effectiveness of employees. The equal opportunity plan would involve strict instructions to all staff not to discriminate, and contain an indication of the sanctions to be applied, e.g. loss of bonus, if the instructions are not followed. Supervisory staff would be made accountable for the employees under them, who could be reminded that under the Race

Relations Act, they are personally liable for acts of discrimination, if the employer has taken every reasonable step to prevent it.

In this way an employer would be in complete accord with the Race Relations Act, but to ensure that it stays that way it would be necessary for the employer to regularly monitor the effects of the plan, and make necessary adjustments to the plan in the light of the information obtained. This suggests that it would be cost-effective if records of the ethnic origin of employees and all applicants were maintained on a regular basis, and analysed periodically.

The final strategy is the means by which genuine equality of opportunity can be attained.

5. "We'll eliminate discrimination and also promote equality of opportunity".

This is the fully committed strategy which recognises that even if an employer did not discriminate, there would still be racial inequality in the organisation, which was a reflection of the inequality in society as a whole.

This is because many black workers are at a disadvantage, because in the past they have not had equal access to training and jobs where they could have built up qualifications and good work experience. Others are at a disadvantage because they are recent migrants, newly arrived from another country, or their capacity to speak or write English is poor. The employer pursuing this strategy, for whatever reason, would take all the active steps to prevent discrimination, following a thorough self-examination, which were described above. In addition this employer would, under section 38 of the Race Relations Act, actively encourage black workers to apply for jobs where previously they have been under-represented. Under these circumstances the employer is also permitted to provide special training courses for jobs where black workers are under-represented, in order to put them in a more competitive position when applying for the jobs. The employer cannot under the Act actually give them preference when selecting for the jobs.

In addition, as a means of ensuring the success of the plan, the employer could arrange seminars for senior management, and also for supervisors. The objective would be to enable them to become aware of, and understand, the reasons for the plan, and to feel part of and accountable for it. The supervisor could also learn the specific skills of managing a multi-racial workforce.

Finally, to ensure that there are actually well-qualified black workers to apply for those jobs where they are under-represented the employer could take steps to recruit through channels, and in localities, where they are likely to reach black workers.

the most complete strategy is pursued by the employer which has recognised that it is not a white company which happens to have a multi-racial workforce, but that it is a multi-racial organisation which thiks and acts like one, by creating and maintaining equality of opportunity. The multi-racial organisation would even carry out a restructuring of its jobs, and would broaden or alter traditional selection standards in order to remove barriers to the employment of ethnic minority groups.

If minority groups are under-represented in the organisation, the position cannot be redressed overnight. It would therefore be essential to set a series of realistically attainable objectives. This would be necessary to provide a measure of progress toward the ultimate goal of equal opportunity. Organisational change of this nature may cost time and money, but if an employer has a real commitment to the goal of equality of opportunity, then the measures described above are necessary means to that end. Other wise the employer is indulging in tokenism and fine talk rather than action.

An active interventionist strategy is necessary, not only to detect and prevent racial discrimination, but also to overcome the racial inequality that exists in society by creating genuinely equal opportunity for all, regardless of racial or ethnic origins.

Concluding Comments

In employment men are more equal than women, and the racial minorities are less equal. Almost all that has been said above also applies to the attainment of equality of opportunity for women. A single EEOP could apply equally well to women and ethnic minorities.

Ideally, an EEOP should create procedures for bringing about change within the organisation and should indicate the direction in which change should occur. It can also provide the framework for the training of management and key personnel to help them understand, and contribute to, the change. However elaborate, or however well publicised. a policy will not of itself bring about change. It is important to recognise that change can be painful and can generate anxiety. The essential ingredient is, therefore, a determination at the highest levels in the organisation to bring about real change through the implementation of the policy.

The critical stages in attaining equality of opportunity are:

- The decision to actively eliminate discrimination and to create genuine equality of opportunity.
- A detailed and thorough analysis of the organisation to define the problem, and the formulation of planned changes in personnel practices.
- Allocation of responsibility to implement the plan.
- Setting long-term and intermediate objectives.

- Implementation of change.
- Monitoring the effectiveness, and progress, of the changes.

The actual means by which the plans are realised, in the elimination of discrimination and the attainment of equal opportunity, depend on the individual employer and its style of management. The Runnymede Trust through its Industrial Unit, is in a position to give advice on the particular techniques which may be involved, such as the design of monitoring systems or unbiassed selection procedures, or sensitivity training for senior managers, as well as seminars on the management of a multi-racial workforce.

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1. See the successive reports by Political and Economic Planning culminating in the Facts of Racial Disadvantage; A National Survey by David J. Smith. Volume XLII (1976).
2. D.J. Smith (1974) Racial Disadvantage In Employment. Political and Economic Planning. Volume XL Broadsheet 544.
3. "Equal Employment Opportunity: Progress and Results". March 1976 Washington, DC; Bureau of National Affairs.
4. Tom Rees (1974) Equal Employment Opportunity in the USA - Recent Developments. The Runnymede Trust.
5. See M.A. Pearn (1977) Selecting and Training Coloured Workers. Training Information Paper. London: H.M.S.O.
6. There are several useful guides to the Race Relations Act:
   (i) "Racial Discrimination: A guide to the Race Relations Act 1976". Home Office.

   Guides geared to the needs of employers are:

   (ii) "A guide to the Race Relations Act 1976" Industrial Society, and

   (iii) "The New Race, Law and Employment". Incomes Data services Ltd.